

November 17, 2003



Marlene H. Dortch
Secretary
Federal Communications Commission
TW-A325
445 Twelfth St., SW
Washington, DC 20554

Re: *Notice of Ex parte* presentation in MB Docket No. 03-15

Dear Ms. Dortch:

On November 17, 2003, Harold Feld, Associate Director, MAP, and Michael Calabrese, Vice President, New America Foundation, met with Johanna Mikes, legal adviser to Commissioner Martin.

Mr. Feld submitted into the docket the Comments of UCC, *et al.* originally filed in 99-360 and the comments and reply comments of UCC, *et al.* filed in 98-120. UCC incorporates these filings into this docket by reference.

Mr. Calabrese inquired into the status of the DTV proceeding. Ms. Mikes said it was "fluid" with no positions taken yet. Commissioner Adelstein did express concern, however, that the combination of new ownership regulations and multicasting rules could give a single entity 15 or more channels in a geographic area. In addition, the Commissioner had concerns as to how multicasting would impact localism.

Mr. Calabrese said that simply granting multicast must carry would be missing many opportunities. First, the Commission must extract from broadcasters public interest obligations equivalent to the new right of must carry. In this regard, Mr. Feld raised the obligations listed by UCC in 99-360: increased obligations for children's programming, increased obligations for local programming, free time for political candidates, increased public file obligations (greater detail and put content on a website).

Mr. Feld also stated that the DTV transition itself does not necessarily constitute a sufficiently compelling government interest under *Turner*. The issue at stake in *Turner* was service to the public and maintaining a critical free flow of information and ideas. By linking multicast must carry to enhanced obligations to serve and inform the public, the Commission can meet the demands of intermediate scrutiny.

Mr. Calabrese said that in exchange for multicast must carry, broadcasters should be required to switch off analog transmission by a date certain. Only in this way can multicast must carry be justified as a transition measure. Otherwise, broadcasters will continue to try to hold on to their analog spectrum and the Commission will achieve, at best, a piecemeal transition conferring windfalls on the existing licensees. Furthermore, the Commission must preserve the analog channels as a means of providing rural broadband, ideally via opening the analog channels returned to unlicensed use.

In accordance with Section 1.1206(b), 47 C.F.R. § 1.1206, this letter is being filed electronically with your office today.

Respectfully submitted

Harold Feld
Associate Director
Media Access Project

cc: Johanna Mikes